substantial connection with Singapore and not with any other country of jurisdiction.

In our opinion it is clear that in all the circumstances the Singapore court is the *forum conveniens* for all the parties to the present action. The case of *"The Christiansborg", supra* relied on by the appellants is distinguishable. There two foreign ships one of which was arrested in England after its earlier arrest in Holland were involved in a collision beyond English territorial waters. Similarly, in *"The Marinero", supra* two ships were involved in a collision in Argentine waters and the owners of one of them, the "Cressington Court" wishing to found jurisdiction in Holland arrested a sister ship of the other colliding vessel, *"The Marinero"*, in Holland. Later they arrested *"The Marinero"* in England. In *"The Christiansborg"* the majority of the Court of Appeal accepted the view of Hannen J. in the court below that by accepting the security offered for the release of the offending vessel, the plaintiffs ought not in justice to be allowed to subsequently arrest the offending vessel in England on the ground that the release of that vessel by the Dutch court on satisfactory security meant "that the vessel was to continue her voyage and be useful in any part of the world to her owners and not merely that she was at liberty to navigate Dutch waters". It is to be observed, however, that both Baggallay L.J. and Fry L.J. (the majority judges) stressed that the court must examine into the circumstances of the case to see whether the English action should be stayed and the vessel released. They found no circumstance in favour of the plaintiffs.

In *"The Marinero"*, Willmer J. on the facts before him extended what he called "the principle of *"The Christiansborg"* to a case in which it is not the offending ship, but another ship belonging to the same owners, which has been the subject of arrest in foreign proceedings".

As was observed by Bowen L.J. in *"The Reinbeck"*[4]:

"It may well be that in actions *in rem* there may be circumstances which make it an abuse of the process of the court to proceed with the case, but it is material in each case to see whether it is in fact an abuse of the process of the court or contrary to good faith...."

In our judgment, taking into consideration all the circumstances of the case, we ought not to disturb the finding of Choor Singh J. that there were no circumstances which made it an abuse of the process of the court to bring the present proceedings. The appeal must be dismissed with costs, subject to the respondents' undertaking to discontinue the Japanese action and to discharge the Japanese security.

Appeal dismissed.

Solicitors: *Donaldson & Burkinshaw; Rodyk & Davidson.*

J.B. JEYARETNAM v. LEE KUAN YEW

[C.A. (Wee Chong Jin C.J., Kulasekeram and D'Cotta JJ.) September 5, 1979]

[Singapore — Civil Appeal No. 26 of 1979]

Libel and Slander — Defamation — Election Speech — Whether words capable of conveying a defamatory meaning — Effect on reasonable men — Defence of qualified privilege — Defence of fair comment — Quantum of damages — Defamation Act, (Cap. 32), s. 16.

Torts — Defamation — Election speech — References to respondent and his family.

This was an appeal from the decision of Chua J. reported at [1979] 1 M.L.J. 128 The respondent had brought an action against the appellant for defamation arising out of remarks made by the appellant in an election speech. The learned trial judge held that the words complained of bore the meaning that the respondent had procured the grant of favours to Messrs. Lee and Lee of which his wife was the senior partner and to his family and that the respondent had been guilty of nepotism and corruption and were defamatory of the respondent. The learned trial judge rejected the pleas of fair comment and qualified privilege and gave judgment for the respondent in the sum of $130,000 damages. The appellant appealed.

Held: (1) in this case it was plain that reasonable persons would be likely to understand the words in a libellous sense, that is, that the respondent had managed his fortune well by using his position as Prime Minister to procure preferential treatment for his wife and brother to to his own and their personal advantage;

(2) the learned trial judge was correct in rejecting the defence of qualified privilege, as he found that the words were published by the appellant recklessly, without an honest belief in the truth, with the intention of denigrating and insulting the respondent and that in publishing those words, the appellant was actuated by malice;

(3) the defence of fair comment must also fail in the light of the finding of the learned trial judge that the words were published by the appellant recklessly, being indifferent to their truth or falsity and that the appellant was actuated by express malice;

(4) there was no misdirection by the learned trial judge in arriving at the award of $130,000 as damages. The award was not only not excessive but was reasonable having regard to all the circumstances of the case;

(5) no evidence was given at the trial in mitigation of damages as required by section 16 of the Defamation Act and therefore the ground of appeal based on that section must fail.

Cases referred to:-

(1) *Jones v. Skelton* [1963] 1 W.L.R. 1362.

(2) *Mc Carey* v. *Associated Newspapers Ltd.* [1964] 3 All E.R. 947.

(3) *Broome* v. *Cassell & Co.* [1972] A.C. 1027.

(4) *Lewis* v. *Daily Telegraph Ltd.*, and *Lewis* v. *Associated Newspapers Ltd.* [1964] A.C. 234.

COURT OF APPEAL.

K.E. Hilborne for the appellant.

J. Grimberg for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the Court): In December 1976 the Government called a General Election and fixed December 23 as polling day. Mr. Lee Kuan Yew, the Prime Minister, opened the election campaign of the People's Action Party, the party in power, at a press conference on December 13 during which he questioned the competence of opposition leaders. He said that the pity of it was that nobody in the present opposition had it in him to oppose. He said "the public are entitled to something better, but unfortunately we are faced with an opposition whose leaders were inconsequential men unable to propound a credible alternative on how to make Singapore more viable and secure or how to

give the people a better standard of living." He said most of them wanted to give everything away — lower taxes, lower rents and lower public utilities rates. He said he did not believe the public would go in for the give-aways proposed by the opposition. As an example, he said that none of those who proposed to give things away, either by their management of their own parties or even of their own personal fortunes, had shown they could accumulate anything. In contrast, he referred to what the P.A.P. had built up in the government — over $8,000 million and that "if we start giving things away we would end up as paupers."

Criticising and questioning the credibility and competence to govern of each other by the leaders of political parties during election time is common currency in all democracies. Ripostes to such criticisms are also common currency. Mr. Jeyaretnam was then and still is the leader of an opposition party, the Workers' Party. He was thus one of those whom the Prime Minister so criticised. How did he react? At the final election rally of his party on December 18 he made a speech at Fullerton Square before an audience of 1,500 people who appeared to be mostly office workers, executives and managers from banks and other businesses in the area. In his speech, Mr. Jeyaretnam said:—

"Now I want, this afternoon to spend some time my dear friends in reply to some of the statements that have been made by the PAP leaders and the leaders of government against the oppositions and in particular the Workers' Party. I will begin with the Secretary-General of the People's Action Party. oh sorry Pay and Pay Party and the Prime Minister now of Singapore, that practise the government and holding the reign of power. I don't know whether the Secretary-General, Prime Minister of Singapore realised what he was saying. Very unfortunate. I'll tell you what he said. On nomination day when he was filing his papers, he says, 'What can you expect from the opposition leaders. They haven't shown in the management of their own personal fortune that they could accumulate anything.' This is, I've taken this from the Straits Times that the opposition leaders have shown in the management of their own personal fortune that they could accumulate anything. Well, my dear friends, I feel guilty for that. I'm not very good in the management of my own personal fortune but Mr. Lee Kuan Yew had managed his personal fortune very well. He is the Prime Minister of Singapore. His wife is the senior partner of Lee & Lee and his brother is the Director of several companies, including Tat Lee Bank in Market Street; the bank which was given a permit with alacrity, banking permit licence when other banks were having difficulties getting their licence. So Mr. Lee Kuan Yew is very adept in managing his own personal fortune but I'm not. I'm a fool for your sake and I tell you this, my dear friends, that if I should become the Prime Minister of Singapore, I'm not saying I will. Mr. Lee Kuan Yew keeps talking as though he is going to remain for the next 20 years. I know it's left to the people; the people will decide who will form the government and then the people in Parliament will decide who will be the Prime Minister; all I'm saying is, if I become Prime Minister there will be no firm of J.B. Jeyaretnam & Company in Singapore because I wouldn't know how to manage my own fortune."

From the start the Prime Minister contended that the underlined words were defamatory. He said they meant and were understood by Mr. Jeyaretnam's audience to mean that he had procured preferential treatment for his brother and/or his wife to his own and/or their personal financial advantage, had thereby abused and would continue to abuse the office of Prime Minister of Singapore, is wanting in honesty and integrity and is unfit to hold the office of Prime Minister of Singapore. Accordingly, as soon as the General Election was over he sought through his solicitors a public apology from Mr. Jeyaretnam because the imputation of corruption and nepotism was completely and totally false and unless his reputation was vindicated by a public retraction by Mr. Jeyaretnam of this grave slander the consequences of these false allegations could erode the position of a Prime Minister and his government and drive him from political life.

Correspondence then ensued between the solicitors acting for the Prime Minister and Mr. Jeyaretnam. As no satisfactory apology was offered the Prime Minister commenced the present action against Mr. Jeyaretnam for damages for slander.

In the Statement of Claim, after setting out the words complained of (see *supra*), it is alleged as follows:—

"4. The said words in their natural and ordinary meaning meant and were understood to mean that the plaintiff had procured preferential treatment for his brother and/or wife to his own and/or their personal financial advantage, had thereby abused and would continue to abuse the office of Prime Minister of Singapore, is wanting in honesty and integrity and is unfit to hold the said office.

5. The said words were calculated to disparage the plaintiff in his aforesaid office.

6. In the premises, the plaintiff has been injured in his character, credit and reputation as Prime Minister."

In his defence, Mr. Jeyaretnam denied that the said words bore or were understood to bear any of the meanings as alleged in the Statement of Claim or any meaning defamatory of the Prime Minister. In his defence, Mr. Jeyaretnam also raised the pleas of fair comment and qualified privilege. In support of his plea of fair comment, he administered interrogatories which were directed to details of the Prime Minister's and his wife's and brother's fortunes.

The action was tried before Chua J. who held that the words complained of bore the meaning that the Prime Minister had procured the grant of favours to Lee and Lee of which his wife is the senior partner, and to his family and that the Prime Minister had been guilty of nepotism and corruption and were defamatory of him. Chua J. rejected the pleas of fair comment and qualified privilege. He found, in rejecting the plea of qualified privilege, that the words were published by Mr. Jeyaretnam recklessly, without an honest belief in their truth, with the intention of denigrating and insulting the Prime Minister and that in publishing those words, Mr. Jeyaretnam was actuated by malice. With regard to the plea of fair comment, Chua J. found that the words were published by Mr. Jeyaretnam recklessly, being indifferent as to their truth or falsity and that Mr. Jeyaretnam was actuated by express malice. In the result, Chua J. gave judgment for the Prime Minister and awarded $130,000 damages. Chua J. further made an order restraining Mr. Jeyaretnam from further publishing the same or similar words.

Mr. Jeyaretnam now appeals against the judgment of Chua J. Mr. Hilborne, counsel for Mr. Jeyaretnam,

contends that the words uttered by Mr. Jeyaretnam on December 18, are not capable of bearing a defamatory meaning in that under all the circumstances in which the words were spoken the natural and ordinary meaning of the words relates to the accumulation of wealth, not by corrupt means at all but by legitimate and legal means which nevertheless the speaker deprecated and thus the words complained of are not capable of conveying a defamatory meaning.

The Judicial Committee of the Privy Council in the case of *Jones* v. *Skelton*[1] stated the law as follows:

"It is well settled that the question whether words which are complained of are capable of conveying a defamatory meaning is a question of law and is therefore one calling for decision by the court.... In deciding whether words are capable of conveying a defamatory meaning the court will reject those meanings which can only emerge as the product of some strained or forced or utterly unreasonable interpretation. In *Capital and Countries Bank* v. *George Henty & Sons,* Lord Selborne L.C. said: 'The test, according to the authorities is whether, under the circumstances in which the writing was published, reasonable men to whom the publication was made, would be likely to understand it in a libellous sense.' The ordinary and natural meaning of words may be either the literal meaning or it may be implied or inferred or an indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning capable of being detected in the language used can be part of the ordinary and natural meaning of words. See *Lewis* v. *Daily Telegraph Ltd.* The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction would draw from the words. The test of reasonableness guides and directs the court in its function of deciding whether it is open to the jury in any particular case to hold that reasonable persons would understand the words complained of in a defamatory sense."

We reject Mr. Hilborne's contention. It is plain, applying Lord Selborne's test, that reasonable persons would be likely to understand the words in a libellous sense, i.e. that Mr. Lee Kuan Yew had managed his fortune very well by using his position as the Prime Minister of Singapore to procure preferential treatment for his wife and his brother to his own and to their personal financial advantage. The implication or inference which a reasonable person would be likely to draw on hearing the words is that Mr. Lee Kuan Yew had used his position as Prime Minister for personal and family financial gain by corrupt means and by acts of nepotism. In our opinion, the meaning suggested by Mr. Hilborne is not a meaning capable of being detected in the language used and under the circumstances in which it was spoken by any reasonable hearer. Such an interpretation would, in our opinion, be an utterly unreasonable interpretation of the words.

Mr. Hilborne's next contention is that Chua J. erred in rejecting the defence of qualified privilege and in holding that in publishing the words Mr. Jeyaretnam was actuated by malice. The law is not in dispute. A man is entitled to defend himself against written or verbal attacks provided he does not go beyond defence and proceeds to offence or attack. Chua J. found that the accusation of corruption and nepotism made by Mr. Jeyaretnam against the Prime Minister was not a defence against a charge of incompetence. Mr. Hilborne's argument is that the words complained of did not in point of their character or their substance exceed the legitimate bounds of reply in answer to a charge by the Prime Minister during his Press Conference that Mr. Jeyaretnam, an opposition leader, was an inconsequential person who proposed to give everything away when by the management of his party's or even his own personal fortune he had shown he could not accumulate anything. We agree with the finding of Chua J. and reject Mr. Hilborne's contention. An accusation of corruption and nepotism is clearly unrelated to a criticism of incompetence in financial affairs and can in no sense amount to a defence against such criticism, however strong that may be. On the contrary it amounts to a counter attack which exceeds the bounds of legitimate defence. Mr. Hilborne also submits that there was no evidence to support the finding of malice. That submission is in our opinion entirely devoid of merit. The evidence was all the other way. Mr. Jeyaretnam himself in his evidence admitted that he never believed otherwise than that the Monetary Authority of Singapore acted with complete propriety and that the Prime Minister had nothing to do with the granting of a banking licence to the Tat Lee Bank. Furthermore, Chua J. found, clearly on his own assessment of the credibility of Mr. Jeyaretnam, that Mr. Jeyaretnam published the words without an honest belief in their truth and with the intention of denigrating and insulting the Prime Minister. These findings, which we accept, were open to Chua J. on the evidence before him.

We do not propose to deal with the defence of fair comment which is raised as a ground of appeal in the Petition of Appeal but not supported by any argument during the hearing of the appeal. It is sufficient for us to say that in the light of the findings of fact by Chua J. this ground must fail.

It remains for us to deal now with the question of damages. Mr. Hilborne contends that the award of $130,000 is manifestly excessive. The law on assessment of damages is set out in *Gatley* on Libel and Slander (7th Edition) at paragraphs 1358 to 1360 as follows:—

"They (the jury or the judge if the award is left to him) are entitled to take into their consideration the conduct of the plaintiff, his position and standing, the nature of the libel, the mode and extent of publication, the absence or refusal of any retraction or apology, and 'the whole conduct of the defendant from the time when the libel was published down to the very moment of their verdict. They may take into consideration the conduct of the defendant before action, after action, and in court at the trial of the action', and also, it is submitted, the conduct of his counsel, who cannot shelter his client by taking responsibility for the conduct of the case. They should allow 'for the sad truth that no apology, retraction or withdrawal can ever be guaranteed completely to undo the harm it has done or the hurt it has caused'. They should also take into account the evidence led in aggravation or mitigation of the damages. They should not take into account in assessing damages any part of the words complained of in respect of which the defendant has made out a defence, or any damage done to the plaintiff's reputation or feelings by any defamatory matter for which the plaintiff (sic) is not responsible. They should not speculate on whether the defendant will be indemnified.

The conduct of the defendant, his conduct of the case, and his state of mind are thus all matters which the plaintiff may rely on as aggravating the damages. 'Moreover, it is very well established that in cases where the damages are at large the jury (or the judge if the award is left to him) can take

into account the motives and conduct of the defendant where they aggravate the injury done to the plaintiff. There may be malevolence or spite or the manner of committing the wrong may be such as to injure the plaintiff's proper feelings of dignity and pride. These are matters which the jury can take into account in assessing the appropriate compensation.' In 'awarding damages' the natural indignation of the court at the injury inflicted on the plaintiff is a perfectly legitimate motive in making a generous, rather than a more moderate award to provide an adequate solatium ... that is because the injury to the plaintiff is actually greater, and, as the result of the conduct exciting the indignation, demands a more generous solatium.

Compensatory damages ... may include not only actual pecuniary loss and anticipated pecuniary loss or any social disadvantages which result, or may be thought likely to result, from the wrong which has been done. They may also include the natural injury to his feelings — the natural grief and distress which he may have felt at having been spoken of in defamatory terms, and if there has been any kind of high-handed, oppressive, insulting or contumelious behaviour by the defendant which increases the mental pain and suffering caused by the defamation and may constitute injury to the plaintiff's pride and self-confidence, these are proper elements to be taken into account in a case where the damages are at large'. But these matters may not be taken into account as a reason for giving punitive damages."

In arriving at his award, Chua J. took several matters into consideration. He said that the words amount to a very grave slander which struck at the heart of the Prime Minister's political reputation. Of that there can be no doubt at all. In our opinion, for an incumbent prime minister of a democratic country who has continuously held office for over a decade to be publicly falsely accused by the leader of an opposition party at the final election rally of that party during a coming general election of corruption and nepotism for personal financial advantage must be the gravest of slanders, must cause the greatest indignation to him, and the gravest harm, if believed, to his political life. The gravity of such a slanderous accusation is enhanced if the standing of the accuser is such that people who hear the accusation are likely to take it seriously and are likely to repeat it to others.

Chua J. also took into consideration that Mr. Jeyaretnam never retracted or apologised for a word he had said. It is not in dispute that Mr. Jeyaretnam never made a public retraction or apology for the words he spoke. The correspondence passing between the solicitors showed that while Mr. Jeyaretnam was prepared to apologise, he was not prepared to concede that his words were defamatory. We have a finding of Chua J. that Mr. Jeyaretnam knew that the words bore the meaning put on them by the Prime Minister and intended them to bear that meaning. In the light of that finding the inference is inescapable that Mr. Jeyaretnam never intended to make a public retraction or apology for the words he spoke.

Chua J. also took into consideration his finding that the plea of fair comment was not an honest one and was thus an aggravating factor. It was a defence that was persisted throughout the trial in spite of the fact, as found by Chua J. that Mr. Jeyaretnam knew that he was falsely accusing and intended to falsely accuse the Prime Minister of corruption and nepotism. The interrogatories that Mr. Jeyaretnam administered as to the personal fortunes of the Prime Minister, his wife and his brother were administered as though there was truth in the accusation though he did not believe it to be true.

Chua J. also took into consideration the fact that Mr. Jeyaretnam made no attempt to persuade the trustees of a fund called "Save Democracy Fund", established by some senior officials of the Workers' Party to assist him to defend the present action, to change the name of the Fund. The title of the Fund clearly misrepresented the Prime Minister's motives for bringing the action. It was saying in plain terms that the Prime Minister's action was an attack on democracy and not, as was the case, the exercise of the right of an individual to vindicate his reputation.

Mr. Hilborne attacked the award of $130,000 as outrageous. His submission is that all the actions of Mr. Jeyaretnam are those of a man who is convinced he has said nothing defamatory, who only took steps to protect and defend himself as best he could, and the law allows him no less. He submits there were no aggravating factors. It is plain from what we have already said that this submission disregards the findings of Chua J. with which we agree entirely. Mr. Hilborne relies on a dictum of Diplock L.J. (as he then was) in *McCarey* v. *Associated Newspapers Ltd.*[2] at page 960. He said: —

"I am convinced that it is not just (and I do not think that it is the law, as counsel for the plaintiff has contended) that, in equating incommensurables when a man's reputation has been injured, the scale of values to be applied bears no relation whatever to the scale of values to be applied when equating those other incommensurables, money and physical injuries. I do not believe that the law today is more jealous of a man's reputation than of his life and limb."

With respect, we think it would be beyond what the present law on defamation requires to have regard to the relation of the scale of values applied in equating money and physical injuries in the field of personal injuries. We prefer the approach of Lord Hailsham in *Broome* v. *Cassell & Co.*[3] where he said at page 1071: —

"In actions of defamation and in any other actions where damages for loss of reputation are involved, the principle of restitutio in integrum has necessarily an even more highly subjective element. Such actions involve a money award which may put the plaintiff in a purely financial sense in a much stronger position than he was before the wrong. Not merely can he recover the estimated sum of his past and future losses, but, in case the libel, driven underground, emerges from its lurking place at some future date, he must be able to point to a sum awarded by a jury sufficient to convince a bystander of the baselessness of the charge. As Windeyer J. well said in *Uren* v. *John Fairfax & Sons Pty. Ltd.*, 117 C.L.R. 115, 150:

'It seems to me that, properly speaking, a man defamed does not get compensation for his damaged reputation. He gets damages because he was injured in his reputation, that is simply because he was publicly defamed. For this reason, compensation by damages operates in two ways — as a vindication of the plaintiff to the public and as consolation to him for a wrong done. Compensation is here a solatium rather than a monetary recompense for harm measurable in money.'

This is why it is not necessarily fair to compare awards of damages in this field with damages for personal injuries. Quite obviously, the award must include factors for injury to the feelings, the anxiety and uncertainty undergone in the litigation, the absence of apology, or the reaffirmation of the truth of the matters complained of, or the malice of the defendant. The bad conduct of the plaintiff himself may also enter into the matter, where he has provoked the libel, or where perhaps he has libelled the defendant in reply. What is awarded is thus a figure which cannot be arrived at by any purely objective computation. This is what is meant when the damages in defamation are described as being 'at large'. In a sense, too, these damages are of their nature punitive or exemplary in the loose sense in which the terms were used before 1964, because they inflict an added burden on the defendant proportionate to his conduct, just as they can be reduced if the defendant has behaved well — as for instance by a handsome

apology — or the plaintiff badly, as for instance by provoking the defendant, or defaming him in return."

In our judgment, there was no misdirection by Chua J. in arriving at the award of $130,000. We are also of the opinion that the award is not only not excessive but is reasonable having regard to all the circumstances of the case. It was a grave slander perpetrated deliberately and not only without regard to the truth but knowing that it was untrue. It was perpetrated for political gain not caring what distress it would cause and what harm it would inflict on the personal and political reputation of an incumbent prime minister.

Finally, we turn to deal with a ground on appeal raised in the Petition of Appeal and which is based on section 16 of the Defamation Act (Cap. 32). This ground reads as follows:—

"*(D) Damages*

(viii) The trial judge erred in law in failing to take into consideration that the plaintiff had already obtained judgment for a total of $310,000 for slander of him to the same effect uttered by others."

Section 16 of the Defamation Act, which is in identical terms with section 12 of the Defamation Act, 1952 of England, reads as follows:—

"16. In any action for libel or slander the defendant may give evidence in mitigation of damages that the plaintiff has recovered damages or has brought actions for damages, for libel or slander in respect of the publication of words to the same effect as the words on which the action is founded, or has received or agreed to receive compensation in respect of any such publication."

At the trial of the action no evidence was given in mitigation of damages as required by section 16 and it would appear from the record that section 16 was not raised on behalf of Mr. Jeyaretnam for consideration of Chua J. In *Lewis* v. *Daily Telegraph Ltd.* and *Lewis* v. *Associated Newspapers Ltd.*[4] similar libels were published in two national newspapers on the same day and each had to be dealt with by a different jury. Lord Reid said (page 261):—

"If each jury were to award damages without regard to the fact that the plaintiffs are also entitled to damages against the other newspaper, the aggregate of the damages in the two actions would almost certainly be too large. Section 12 of the Defamation Act, 1952, is intended to deal with that. In effect it requires that each jury shall be told about the other action, but the question is what each jury should be told. I do not think it is sufficient merely to tell each jury to make such allowance as they may think fit. They ought, in my view, to be directed that in considering the evidence submitted to them they should consider how far the damage suffered by the plaintiffs can reasonably be attributed solely to the libel with which they are concerned and how far it ought to be regarded as the joint result of the two libels. If they think that some part of the damage is the joint result of the two libels they should bear in mind that the plaintiffs ought not to be compensated twice for the same loss. They can only deal with this matter on very broad lines and they must take it that the other jury will be given a similar direction. They must do the best they can to ensure that the sum which they award will fully compensate the plaintiffs for the damage caused by the libel with which they are concerned, but will not take into account that part of the total damage suffered by the plaintiffs which ought to enter into the other jury's assessment."

In all the circumstances this ground of appeal must also fail.

In the result, the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Hilborne & Co.; Drew & Napier.*

A MALAYSIAN REPORTS

PUBLIC PROSECUTOR v. MUNUSAMY

[F.C. (Suffian L.P., Raja Azlan Shah C.J. (Malaya) and Hashim Yeop A. Sani J.) May 8 and June 29, 1979]

[Kuala Lumpur — Federal Court Criminal Reference No. 4 of 1978]

Criminal Law and Procedure — Issuing certificate required by law to be given knowing it to be false — Whether special pass issued under Immigration law a certificate required by law — Reference of question of law to Federal Court — Disposal of appeal — Courts of Judicature Act, 1964, s. 66(5) — Penal Code, s. 197.

Penal Code, s. 197 — Issuing false certificate — Special pass under Immigration Act, 1963.

Immigration — Special pass — Issuance of — Immigration Act, 1963 — Penal Code, s. 197.

In this case the respondent had been convicted of a charge under section 197 of the Penal Code in that he issued a Special Pass which was to his knowledge false in a material particular. On appeal to the High Court the appeal was allowed on the ground that the Special Pass was not a certificate required by law to be given. On application by the Public Prosecutor the learned Judge referred the following question to the Federal Court:

"Whether a special pass issued under regulation 14(3) of the Immigration Act, 1963 . . . is a certificate required by law to be given within the meaning of section 197 of the Penal Code. . . ."

Held: (1) the special pass issued in the circumstances of this case, where the Immigration authorities believed that the traveller was the holder of a Malaysian passport, was a certificate required by law to be given or signed within section 197 of the Penal Code;

(2) the whole case may be argued as an appeal before the Federal Court to ascertain whether the conviction was correct.

Cases referred to:-

(1) *Government of Malaysia* v. *Loh Wai Kong* [1979] 2 M.L.J. 33.

(2) *Public Prosecutor* v. *Dr. G.J.N. D'Fonseka* [1958] M.L.J. 102.

(3) *Chua Sin Teng and others* v. *Public Prosecutor* [1963] M.L.J. 207.

(4) *Sim Tiew Bee* v. *Public Prosecutor* [1973] 2 M.L.J. 200.

(5) *Yue Sang Cheong Sdn. Bhd.* v. *Public Prosecutor* [1973] 2 M.L.J. 77.

(6) *Attorney-General for Northern Ireland* v. *Gallagher* [1963] A.C. 349.

The following cases were also referred to in argument — *Kulasingam* v. *Public Prosecutor* [1978] 2 M.L.J. 243; *Oh Keng Seng* v. *Public Prosecutor* [1976] 2 M.L.J. 9; *Mohamed bin Musa* v. *Public Prosecutor* [1972] 1 M.L.J. 161; *Sevak J. Bhogilal* v. *Temple Committee* 1925 A.I.R. P.C. 155; *Lee Kee Choong* v. *Empat Nombor Ekor (N.S.) Sdn & Others* [1976] 2 M.L.J. 93, 95; *Baikunti Missir* v. *Narindra Sundari Debi* 1917 Pat. 697; *Yoong Hock Pin* v. *Public Prosecutor* [1977] 1 M.L.J. 178.

FEDERAL COURT.

Faidz Mohamed Darus (Deputy Public Prosecutor) for the applicant.

V.K. Palasuntharam for the respondent.

Cur. Adv. Vult.

Suffian L.P. (delivering the judgment of the Court): The accused was convicted of a charge under section 197 of the Penal Code as follows:

"That you on March 1, 1975 at about 4.30 p.m. at the Melaka Airport Immigration Checkpoint, in the District of Melaka Tengah, in the State of Melaka, issued a Certificate, to wit, a Special Pass No. 136844, which is required by law to be